
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
WCVC, Inc.)	File No. EB-02-TP-314
Licensee of Station WCVC(AM),)	NAL/Acct. No. 200332700001
Tallahassee, Florida)	FRN # 0003-7830-40

FORFEITURE ORDER

Adopted: February 2, 2004

Released: February 4, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000.00) to WCVC, Inc. (“WCVC”), licensee of Station WCVC(AM), Tallahassee, Florida, for willful violation of Section 73.49 of the Commission’s Rules (“Rules”).¹ The noted violation involves WCVC’s failure to effectively fence its antenna structure.

2. On October 22, 2002, the Commission’s Tampa, Florida Office (“Tampa Office”) released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of seven thousand dollars (\$7,000.00) to WCVC for the noted violation.² WCVC filed a response to the *NAL* on November 22, 2002.³

II. BACKGROUND

3. On August 7, 2002, in response to complaints regarding the operations of Station WCVC(AM), agents from the Tampa Office conducted an on-site inspection. The agents observed that WCVC(AM)’s antenna structure, which had radio frequency potential at its base, was not effectively fenced or enclosed. The on-site inspection ultimately culminated in the Tampa Office’s issuance of the *NAL*.

4. In its response to the *NAL*, WCVC admitted that a portion of the fence had been down

¹ 47 C.F.R. § 73.49.

² See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332700001 (Enf. Bur., Tampa Office, released October 22, 2002).

³ See Letter from Wendell Borrink, President, WCVC, Inc. to Ralph Barlow, District Director, Tampa, Florida Office, Enforcement Bureau, Federal Communications Commission (November 22, 2002) (“*NAL Response*”).

following the erection of a new antenna structure in 2001 or through someone knocking it down.⁴ WCVC nevertheless sought cancellation of the proposed forfeiture, claiming that it did not willfully violate the antenna fencing requirements of Section 73.49, that it had years of broadcasting experience, and that it was a “small daytime radio station operating out of a very humble mobile home.”

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁷ In examining WCVC’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁸ As explained below, we do not find that WCVC presented mitigating evidence that would warrant cancellation of the assessed forfeiture.

6. We are not persuaded by WCVC’s “categorical” denial that it “willfully violated Section 73.49.”⁹ Section 503(b)(1)(B) provides that any person who “willfully or repeatedly” fails to comply with any provision of the Act or any rule, regulation or order issued by the Commission under the Act “shall be liable to the United States for a forfeiture penalty.”¹⁰ In this context, “willful” means the conscious and deliberate commission or omission of an act, irrespective of any intent to violate statutory or regulatory requirements.¹¹ WCVC has provided no evidence to suggest that anyone other than it or its agent was responsible for the lack of full and effective fencing. In the instant case, it is undisputed that WCVC consciously and deliberately operated an antenna structure with a base that had radio frequency potential, without proper and effective fencing or other enclosures. We find that WCVC willfully violated Section 73.49 of the Rules.

7. We also do not find persuasive WCVC’s reliance on its assertion that it has never been cited by the Commission for any violations previously as a basis for reducing the forfeiture. Commission records indicate that WCVC previously had been issued a Notice of Violation regarding its apparent failure to comply with Commission Emergency Alert System (“EAS”) testing and antenna structure

⁴ WCVC explained that after the contractors erected the new antenna structure, “evidently a small section near the wooded area was on the ground because of a rotted fence post, or someone later knocked it down.” NAL Response at 1.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ NAL Response at 1.

¹⁰ 47 C.F.R. § 503(b)(1)(B).

¹¹ See 47 U.S.C. § 312(f); see also *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88, ¶ 5 (1991).

cleaning and repainting requirements.¹²

8. Finally, we find the fact that WCVC is a small station, in and of itself, is an insufficient basis to reduce or cancel the forfeiture. To the extent WCVC is arguing inability to pay, the Commission will not consider reducing or canceling a forfeiture on the basis of inability to pay in the absence of financial documentation (e.g., federal tax returns, GAPP standard accounting statements, or other reliable, objective information).¹³ WCVC did not submit any financial documentation that would enable us to assess its ability to pay.¹⁴

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁵ WCVC, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000.00) for its failure to failure to effectively fence or enclose an antenna structure with radio frequency potential at its base, in willful violation of Section 73.49 of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁶ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232500008 and FRN 0006-7409-14. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁷

¹² See *Enforcement Bureau Field Operations List of Actions Taken*, 15 FCC Rcd 20423, 20425 (Enf. Bur. 2000) (referencing the September 14, 2000, Notice of Violation issued to WCVC, Inc. for apparent violation of Sections 11.61 and 17.50 of the Rules); see, e.g., *Hill Country Real Estate Developmental Corp.*, DA 03-3200, ¶ 5 (Enf. Bur., released October 20, 2003) (rejecting a violator's past history claim on the basis of previously issued Warnings and/or Notices of Violations). We also note that the fact that the complainant here may have been a disgruntled station employee is irrelevant to the issue of whether a violation occurred and a forfeiture should be imposed.

¹³ See NAL at ¶ 11.

¹⁴ See, e.g., *Commonwealth License Subsidiary, LLC*, DA 03-3147, ¶ 10 (Enf. Bur., released October 14, 2003) (denying a requested cancellation of a forfeiture for an antenna fencing violation on the basis of inability to pay, because the licensee failed to substantiate its "suggestion" that payment would adversely affect the station's financial viability); *Hancock Broadcasting Corporation*, 16 FCC Rcd 15344, 15346, ¶ 8 (Enf. Bur. 2001) (reducing an assessed forfeiture for antenna fencing and EAS violations, based on the licensee's inability to pay claim, which it substantiated through the submission of three recent federal tax returns).

¹⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁶ 47 U.S.C. § 504(a).

¹⁷ See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Wendell Bornick, President, WCVC, Inc., 117 ½ Henderson Road, Tallahassee, Florida 32312.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau